

**LOUISIANA ATTORNEY DISCIPLINARY BOARD****IN RE: KATHERINE M. GUSTE****DOCKET NO. 14-DB-028**

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**REPORT OF HEARING COMMITTEE NO. 55**

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**INTRODUCTION**

This attorney discipline matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Katherine M. Guste (“Respondent”), bar roll number 23486. ODC alleges that Respondent violated the following Rules of Professional Conduct: Rule 1.16(d) (failure to provide an accounting, return an unearned fee, and return the client’s file) and Rule 8.4(a) (violating or attempting to violate the Rules of Professional Conduct).<sup>1</sup>

**PROCEDURAL HISTORY**

ODC filed formal charges against Respondent on July 16, 2014. By letter dated July 21, 2014, the formal charges were sent to Respondent’s primary registration address via certified mail.<sup>2</sup> The charges were received and signed for at the primary address on or before July 23, 2014. Respondent failed to file an answer to the charges within the time period allowed by Louisiana Supreme Court Rules XIX, §11(E)(3).<sup>3</sup> Accordingly, ODC filed a motion to have the

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<sup>1</sup> See the attached Appendix for the text of the Rules.

<sup>2</sup> Respondent’s primary registration address is 2901 N. Causeway Blvd., Ste. 208, Metairie, LA 70002.

<sup>3</sup> This rule states:

The respondent shall file a written answer with the Board and serve a copy on disciplinary counsel within twenty (20) days after service of the formal charges, unless the time is extended by the chair of the hearing committee. In the event, Respondent fails to answer within the prescribed time, or the time as extended, the factual allegations contained within the formal charges shall be deemed admitted and proven by clear and convincing evidence. Disciplinary Counsel shall file a motion with the chair of the hearing committee to which the matter is assigned requesting that the factual allegations be deemed proven with proof of service of the formal charges upon the respondent. The order signed by the hearing committee chair shall be served upon respondent as provided by Section 13C. Within twenty (20) days of the mailing of the order of the hearing committee chair deeming the factual allegations contained in the formal charges proven, the

formal charges deemed admitted on December 1, 2014. The Hearing Committee Chair signed an order declaring the formal charges deemed admitted and proven by clear and convincing evidence on January 27, 2015. Respondent was granted twenty days in which to file a motion to recall the order, which she failed to do. ODC filed its written argument on sanctions, with supporting exhibits, on April 21, 2015.

### FORMAL CHARGES

The formal charges read, in pertinent part:

Respondent was retained for representation regarding domestic matter. Respondent received checks on May 24, 2012 and June 15, 2012 totaling \$1,750 for both attorney's fee and filing fee. On August 2, 2012, respondent filed a *Rule for Contempt and to Amend Visitation Schedule*.

On June 13, 2013, respondent submitted a response to the allegations raised in the complaint. She claims that, in addition to the rule for contempt, she also was retained to negotiate a community property settlement. Prior to completing the representation, respondent was suspended from the practice of law in Louisiana. In her response, respondent acknowledged that complainant is due a refund of the court costs paid and that a detailed accounting is in order.

Respondent failed to submit a detailed accounting, failed to return the unearned fee and failed to return the client's file. Respondent has violated the following Rules of Professional Conduct:

- 1.16(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advanced payment of fee or expense that has not been earned or incurred.
- 8.4(a)** A lawyer shall not violated [sic] or attempted [sic] to violate the Rules of Professional Conduct.

### FINDINGS OF FACT

Katherine M Guste, is a Louisiana licensed attorney born February 25, 1951. She was admitted to the Louisiana State Bar on April 28, 1995. In 2006, Respondent was

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respondent may move the hearing committee chair to recall the order thus issued upon demonstration of good cause why imposition of the order would be improper or would result in a miscarriage of justice.

suspended from the practice of law in Louisiana for a period of six months, fully deferred, subject a twelve month period of probation. *In re: Guste*, 06-0917 (La. 05/26/06) 929 So. 2d 1233. Respondent is currently ineligible to practice law in Louisiana. She was suspended from the practice of law for two years. *In re: Guste*, 12-1434 (12/04/12) So. 3d.

Respondent was retained by Mr. Sproles and received a \$1750 fee, including \$500 to cover court costs, for representation regarding contempt of court and partition of community property. Respondent was suspended from the practice of law in Louisiana prior to completing the matter. Respondent failed to submit a detailed accounting and failed to return the unearned fee.

### **RULES VIOLATED**

Respondent's conduct is a violation of the following Rules of Professional Conduct:

Rule 1.3 (A lawyer shall act with reasonable diligence and promptness in representing a client), Rule 1.4(a)(3) (A lawyer shall keep the client reasonably informed about the status of the matter, Rule 1.4(a)(4) (A lawyer shall promptly comply with reasonable request for information), Rule 1.5(a) (A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses), Rule 1.16(d) (Upon representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred), and Rule 8.4(a) (A lawyer shall not violate or attempt to violate the Rules of Professional Conduct).

### **EXHIBIT LIST**

- ODC-1            Ethical complaint filed by Janel M. Schroeder.
- a.            Copies of checks made payable to respondent and letter from Darren Sproles regarding payment
  - b.            Letter from complainant and text messages regarding representation

- c. Rule for Contempt and to Amend Visitation Schedule filed by respondent on August 2, 2012.
- ODC – 2 June 14, 2013 – Respondent’s reply to ethical complaint
- ODC – 3 June 19, 2013 – Complainant’s response to respondent
- ODC – 4 October 3, 2013 – Respondent’s supplemental response to initial complaint

### SANCTION

Louisiana Supreme Court relies on the ABA’s *Standards for Imposing Lawyer Sanction* to determine the baseline sanction by “the type of duty violated, the lawyer’s mental state and the extent of the injury caused; and then adjust the sanction in accordance with the aggravating and mitigations factors present.” *In re: Quaid* 94-1316 (La. 11/30/94); 646 So. 2d 343,350.

Once a violation of the Rules of Professional Conduct has been established, Louisiana Supreme Court Rule XIX, Section 10(C) mandates that in determining an appropriate sanction the following factors should be considered:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

Respondent did not display an inability to assist in his defense with regard to the disciplinary proceedings due to a physical or mental incapacity in accordance with Rule XIX §22(C).

In determining an appropriate sanction for recommendations, Disciplinary Counsel has relied upon the following **A.B.A. Standards for Imposing Lawyer Sanctions** with regard to the misconduct:

**A.B.A. Standard 4.41:** “Disbarment is generally appropriate when:

(a) a lawyer abandons the practice and causes serious or potentially serious injury to a client; or

(b) a lawyer knowingly fails to perform services for a client and causes serious or potentially serious injury to a client; or

(c) a lawyer engages in a pattern of neglect with respect to client matters and causes serious or potentially serious injury to a client

**A.B.A. Standard 4.42:** “Suspension is generally appropriate when”

(a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or

(b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

**Louisiana Jurisprudence**

The discipline to be imposed depends upon the facts of each case and the seriousness of the offenses involved, considered in light of any aggravating and mitigation circumstances. *Louisiana State Bar Ass’n v. Whittington* 459 So. 2d 520 (La. 1984). Aggravating factors include prior discipline offenses, substantial experience in the practice of law, and indifference in making restitution.

In *In re: Jones*, 11-1038 (01/24/12) 85 So. 3d 15, the attorney was retained to complete a succession. However, he was discharged before completing the matter. At the time his services were terminated, he had not yet filed the pleadings to open the succession. He refused to refund any portion of the \$10,000 fee that he received, claiming that he earned the entire amount despite having no evidence of how much time he spent working on the succession. The Court found that the attorney knowingly, if not intentionally, violated duties owed to his client. In failing to resolve the fee dispute, the respondent deprived the client of her funds for several years, causing significant harm. Aggravating factors include prior disciplinary offenses, a dishonest or selfish motive, refusal to acknowledge the wrongful nature of the conduct, substantial experience in the practice of law, and indifference to making restitution. The sole mitigating factor was the remoteness of prior offenses. The respondent was suspended from the practice of law for three years, with all but one year deferred and placed on probation for two years.

In *In re: Self*, 13-2361 (11/15/13) 129 So. 3d 1229, the respondent acknowledged that she failed to promptly refund an unearned fee to a client and commingled client funds with personal funds in her trust account. She was suspended from the practice of law for a period of two years, with one year of the suspension deferred, followed by a two year period of supervised probation.

The respondent in the matter of *In re: Taylor*, 14-0646 (5/23/14) 139 So. 3d 1004 collected a fee of \$2500 for representation regarding a port-conviction relief application. After respondent failed to reply to the client's request for the status of his matter, the client requested that his file and the fee be returned. Respondent failed to reply to the client's request.

After receiving notice of the complaint, respondent delivered the client's file to the ODC. The file consisted solely of documents complied by the client. There was no indication that respondent had ever taken any action in the matter, the respondent was suspended from the practice of law for one year and one day and ordered to repay the fee that he received from his client, plus legal interest.

### RECOMMENDATION

Louisiana Jurisprudence and the A.B.A. Standards suggest that the Respondent's similar misconduct warrants the imposition of a three year suspension from the practice of law.

### CONCLUSION

Based on the A.B. A Standards, Louisiana Rules of Professional Conduct and applicable Jurisprudence, the committee recommends that the Respondent be suspended from the practice of law for a period of three years.

New Orleans, Louisiana, this 6<sup>th</sup> day of July, 2015.

**Louisiana Attorney Disciplinary Board  
Hearing Committee #55**

**Glenn B. Adams, Committee Chair  
Tina Louise Suggs, Lawyer Member  
James F. Talley, III, Public Member**

By:



**GLENN B. ADAMS, COMMITTEE CHAIR**

**FOR THE COMMITTEE**

**APPENDIX**

**Rule 1.16. Declining or Terminating Representation**

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(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. Upon written request by the client, the lawyer shall promptly release to the client or the client's new lawyer the entire file relating to the matter. The lawyer may retain a copy of the file but shall not condition release over issues relating to the expense of copying the file or for any other reason. The responsibility for the cost of copying shall be determined in an appropriate proceeding.

**Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ...